

FILED

AUG 23 2021

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

Charles Brown  
250 Parmely AV  
Elyria Ohio 44035  
Plaintiff

-vs-

Christopher R. Rothgery  
225 Court st  
Elyria Ohio 44035  
Defendant(s)

1:21 CV 1645

CASE NO.

JUDGE GAUGHAN

JUDGE \_\_\_\_\_

COMPLAINT

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

CHARLES BROWN	)	<u>IMPROPER COURTROOM BEHAVIOR</u>
250 Parmely Avenue	)	<u>CONSTITUTIONAL RIGHTS VIOLATION</u>
Elyria, Ohio 44035	)	<u>CIVIL RIGHTS VIOLATION</u>
Plaintiff,	)	<u>MALICIOUS PROSECUTION</u>
	)	<u>MISCONDUCT</u>
vs.	)	<u>CONSPIRACY</u>
	)	<u>DEFAMATION</u>
JUDGE CHRISTOPHER R. ROTHGERY	)	<u>CRIMINAL ATTEMPT</u>
225 Court Street	)	<u>CRIMINAL INTENT</u>
Elyria, Ohio 44035	)	<u>ETHICS VIOLATIONS</u>
Defendant.	)	<u>FRAUD OF COURT</u>
	)	<u>TREASON</u>

**Jurisdictional Basis**

JURISDICTIONAL BASIS –

I. Plaintiff claims federal jurisdiction pursuant to Article III § 2 which extends the jurisdiction to cases arising under the U.S. Constitution.

II. Plaintiff brings this suit pursuant to Title 42 U.S. Code § 1983 for violations of certain protections guaranteed to him by the First, Fifth, Eighth, Ninth and Fourteenth Amendments of the federal Constitution, by the defendant under color of law in his capacity as a judge in the Common Pleas Court of Lorain County.

Plaintiff brings this action against Judge Christopher R. Rothgery, a federal judicial officer, pursuant to Title 28 U.S. Code § 1331, in claims arising from violations of federal constitutional rights guaranteed in the First, Fifth, Eighth, Ninth, and Fourteenth amendments to the Constitution and redressable pursuant to Bivens v. Six Unknown Narcotics Agents 403 U.S.388 (1971)

**Parties**

III. Plaintiff is a resident of Lorain County Ohio and is a natural person and residing at 250 Parmely Avenue, Elyria, Ohio 44035 and is service of process is to the jurisdiction and venue of this court service maybe acknowledged

IV. Defendant is a Common Pleas Judge in the Court of Common Pleas Lorain County Ohio located at 225 Court Street, Elyria, Ohio 44035

### Statement of Case

Title 42 U.S. Code § 1983 reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The burden of proof is upon the plaintiff to show that the defendant judge acted unconstitutionally or outside of his/her jurisdiction. If the judge engaged in an egregious discrimination against males in a divorce court, minorities in state criminal cases, members of an unpopular religious group in confrontation with government authorities and treated suspiciously in court or members of a “fringe” political group, these situations can give rise to a claim of denial of equal protection under the Fourteenth Amendment.

### FEDERAL CIVIL RIGHTS STATUTES -

Title 18, U.S.C., Section 242 – Deprivation of Rights under Color of Law

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

- United State Constitution
- United States Code
- Federal Rules of Civil Procedure
- Ohio Constitution
- Ohio Revised Code
- Ohio Rule of Civil Procedure
- Ohio Code of Judicial Conduct
- Ohio Rules of Professional Conduct

In the Case Number 16CR049735, these judicial officers were involved in acting under the color of law in violation of Federal Civil Rights Statute, 18 U.S.C., Section 242 – Deprivation of Rights under Color of Law.

- Judge Christopher R. Rothgery

Judge Christopher R. Rothgery did an illegal act that was in violation of ORC 2109.301(B)(1)(d), interfering with procedural justice in favor and colleague depriving the plaintiff of Due Process of Law and Equal Protection of the Law and willfully depriving the plaintiff of procedural fairness to the fair and natural outcome these legal proceedings. Obstruction

Justice, Interfering with Civil Rights, Using a Cham Legal Process. By adding comments and yelling shut up at the top of his voice, not just to me (the plaintiff) but also to my daughter, Aliceison Brown, while we were on the witness stand.

### **Conspiracy**

An agreement between two or more people to commit an illegal act, along with an intent to achieve the agreement's goal. Most U.S. jurisdictions also require an overt act toward furthering the agreement. An overt act is a statutory requirement, not a constitutional one. See *Whitfield v. United States*, 453 U.S. 209 (2005). The illegal act is the conspiracy's "target offense".

Conspiracy generally carries a penalty on its own. In addition, conspiracies allow for derivative liability where conspirators can also be punished for the illegal acts carried out by other members, even if they were not directly involved. Thus, where one or more members of the conspiracy committed illegal acts to further the conspiracy's goals, all members of the conspiracy may be held accountable for those acts.

Where no one has actually committed a criminal act, the punishment varies. Some conspiracy statutes assign the same punishment for conspiracy as for the target offense. Others impose lesser penalties.

Conspiracy applies to both civil and criminal offenses. For example, you may conspire to commit murder, or conspire to commit fraud.

The defendant knowingly did in fact conspire with others to commit an illegal act by setting up a kangaroo court. My fate had been decided before the trial even began. The defendant knows most of the jury members personally. Defendant knows the arresting police officer personally and talked with prosecutors and attorneys and planted how they were going to carry the illegal act out. Which seems to be just a normal routine to them. Just another day at the office. Railroading people to prison.

On March 7, 2018, the plaintiff took the witness stand. When plaintiff was asked by the prosecution was he trying to have sex with his daughter, the defendant, Judge Christopher R. Rothgery said, and I quote, "Oh come on, we all know what he wanted" before I could say a word. Those words help sway the jury to convict me to prison. The defendant then continued this

malicious verbal assault. Every time I was asked a question from the prosecutor, the defendant would scream at the top of his voice shut up. The defendant did this so many times that I had to leave the witness stand for fear of being in contempt of court. Which was exactly what the defendant was trying to make me do. Knowing all the time what he was doing was illegal misconduct, malicious, improper and with criminal intent.

My daughter, Aliceison Brown, took the witness stand before me, the plaintiff, on March 6, 2018, and was done the same way. She was yelled and screamed at. She started to cry but the defendant kept his verbal malicious assault going. Not allowing my daughter to speak.

JUDGMENT IS VOID WHEN COURT EXCEED ITS JURISDICTION

...COURT EXCEEDS ITS JURISDICTION

“A court must vacate any judgment entered in **excess of its jurisdiction.**” (Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645 (1st Cir. 1972).)

Judge Bjork did not follow prescribed procedure, and exceeded his jurisdiction to issue an excessive bail on the Defendant, on an unproven misdemeanor. Nor did he have the jurisdiction to incarcerate the Defendant, on a void order and, without due process to be heard; she was not even informed in this court of her “crime.” *The U.S. Supreme Court, in Scheuer v. Rhodes*, supra, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974) “A court must vacate any judgment entered in excess of its jurisdiction.” (*Lubben v. Selective Service System Local Bd. No. 27*, supra, 453 F.2d 645 (1st Cir. 1972).)

*“A judgment is void on its face if the trial court exceeded its jurisdiction by granting relief that it had no power to grant. Jurisdiction cannot be conferred on a trial court by the consent of the parties.”* (*Summers v. Superior Court* (1959), supra, ; *Roberts v. Roberts* (1966) supra.) Thus, the fact that a judgment is entered pursuant to stipulation does not insulate the judgment from attack on the ground that it is void. In *People v. One 1941 Chrysler Sedan* (1947) 81 Cal. App. 2d 18, 21-22 [183 P.2d 368]

To ascertain The Truth A Judge Must Allow for Due Process

If the plaintiff had of been allowed due process to be heard, he would have brought to the attention of the court that he was unlawfully in court and how he did nothing wrong. But due to the defendant's unlawful act and actions, he was not allowed to speak on his behalf, which is a violation of the plaintiff's Constitutional and Civil Rights.

Mitchell v. Superior Court (1972) 28 Cal. App. 3d 759, 764, citing Fortenbury v. Superior Court (1940) 16 Cal. 2d 405, 408-09; see In re Berry (1968) 68 Cal. 2d 137, 147 The Investigator and Judge Rothgery were guilty of recklessness, oppression, fraud on the court, elder abuse, denial of due process, and malice in their actions against the plaintiff.

*A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights.* Sabariago v. Maverick, 124 US 261, 31 L Ed 430, 8 S Ct 461, and, ***is not entitled to respect in any other tribunal.*** (e.g. a future preliminary hearing where more charges were filed against the Defendant.)

*"Even the most rudimentary of due process procedures gives the opportunity to be heard . . . to anyone directly affected by [an] official's action."* (Lockyer v. City & County of San Francisco (2004) 33 Cal.4th 1055, 1108.)

*The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees.* Hanson v. Denckla, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228.

**Judge Rothgery refused to hear what the plaintiff had to say.**

*"Plaintiff who have been treated with unfairness, bias and the appearance of prejudice by this Court, and the opposing counsel, leaves open the question of how an uninterested, lay person, would question the partiality and neutrality of this Court. "...our system of law has always endeavored to prevent even the probability of unfairness."* In re Murchinson, 349 U.S. 133, 136 (1955).

This court had a duty to ensure fairness. This Court failed, or refused to ensure that fairness. Marshall v. Jerrico, 100 S. Ct. 1610, 446 U.S. 238

*"The prosecutor's job isn't just to win, but to win fairly, staying well within the rules."* (United States v. Kojayan (9th Cir. 1993) 8 F.3d 1315, 1323). **An attorney's professional responsibilities, whether prosecutor, or defense are set forth in, Strickland v. Washington (1984) 466 U.S. 2668; People v. Pope (1979) 23 Cal.3d 412; as In re Alvernaz (1992) 2 Cal 4th 924. *No one can be punished for disobedience of a void order.* Mitchell v. Superior Court (1972) 28 Cal. App. 3d 759, 764, citing Fortenbury v. Superior Court (1940) 16 Cal. 2d 405, 408-09; see In re Berry (1968) 68 Cal. 2d 137, 147; County of Ventura v. Tillett, 133 Cal. App. 3d 105,110.**

### **The Court Has A Responsibility To Correct a Void Judgment**

*The statute of limitations does not apply to a suit in equity to vacate a void judgment.* (Cadenasso v. Bank of Italy, p. 569; Estate of Pusey, 180 Cal. 368, 374 [181 P. 648]. This rule holds as to **all void judgments**. In the other two cases cited, People v. Massengale and In re Sandel, *the courts confirmed the judicial power and responsibility to correct void judgments.*

The plaintiff was stigmatized simply by being charged, and then not being able to testify or defend himself in the kangaroo-court setting such as what happened with Judge Rothgery silence was in indicator of guilt. Presumption of innocence, and reasonable doubt were totally ignored in these court room settings. Interestingly, the court has held that it violates due process to use a defendant's silence against him, yet this is exactly what happens in this unjust process. Doyle v. Ohio, 426 U.S. 610 (1976)

### **AN UNETHICAL AND OVERZEALOUS PROSECUTOR**

Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and **all persons** concerned in executing such



judgments or sentences, are considered, in law, as trespassers.” Elliot v. Pierson, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

An unethical, overzealous Prosecutor is the most powerful and dangerous person in the court room. He/She can make, break or ruin a person’s life.

“Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, **Fed. Rules Civ. Proc.**, Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 – Klugh v. U.S., 620 F.Supp., 892 (D.S.C. 1985). **Where Due Process is denied, the case is void**, Johnson v. Zerbst, 304 U.S. 458 S Ct. 1019; Pure Oil Co. v. City of Northlake, 10 Ill. 2D 241, 245, 140 N.E. 2D 289 (1956) Hallberg v. Goldblatt Bros., 363 Ill. 25 (1936)

### **FRAUD ON THE COURT!**

*“Fraud upon the court”* has been defined by the 7<sup>th</sup> Circuit Court of Appeals to *“embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court [JUDGES ARE OFFICERS OF THE COURT] so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.”* Kenner v. C.I.R., 387 F.3d 689 (1968); **7 Moore’s Federal Practice, 2d ed., p. 512, 60.23.**

The 7th Circuit further stated *“a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.”* **THE JUDGMENT IS VOID!**

### **CONSEQUENCES FOR A JUDGE NOT FOLLOWING THE LAW**

*“When a state officer acts under a state law in a manner violative of the Federal Constitution, he “comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.”* [Emphasis supplied in original]. *Whenever a judge acts where he/she does not have jurisdiction to act, they are warring*



*on the constitution, i.e., the judge is engaged in an act of treason.* The U.S. Supreme Court, in *Scheuer v. Rhodes*, supra, 416 u.s. 232, 94 s. Ct. 1683, 1687 (1974) *U.S. v. Will*, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); *Cohens v. Virginia* 19 U.S. (6 Wheat) 264 (1921. See: *Cooper v. Aaron*, 358 U.S. 1.78 S.Ct. (1401 1958.) **Therefore, without authority or jurisdiction, a judge loses absolute immunity and is subject to a law suit.**

## **PROSECUTORIAL MISCONDUCT**

There needed to be **experienced counsel** from both sides and given the opportunity to discuss with a judicial officer the **just resolution** of the Defendant's case. The truth of these void orders then would have been brought to light. The orders against him were easily proven void, and he could have easily helped to prove that...Instead he was denied that ability, and suffered **infliction of punishment and conviction.** *Mitchell v. Superior Court* (1972) 28 Cal. App. 3d 759, 764, citing *Fortenbury v. Superior Court* (1940) 16 Cal. 2d 405, 408-09; see *In re Berry* (1968) 68 Cal. 2d 137, 147 (order in excess of jurisdiction).

MOST of the false, perjured accusations brought against the plaintiff by the prosecution were never prosecuted – they could not make their case.

Too often a person is jailed **without any true investigation**, even though ALL attorneys are held to the duty of “due diligence” All attorneys are held to the duty of “due diligence” *Butler v. State Bar* (1986) 42 Cal3rd 323 (329) – *Paul oil Company v. Fed. Mutual Insurane* (1998) 154 Fed 3rd 1049.

## **DUE DILIGENCE and FRIVOLOUS CASES:**

Rules of Professional Conduct – 3-200 Prohibitive Objectives – Rules of Professional Coneduct – 5-200 – Business and Profession Code Section 6068 – Attorney's Duty to Investigate Case – *Butler v. State Bar* (1986) 42 Cal3rd 323 (329) – *Paul oil Company v. Fed. Mutual Insurane* (1998) 154 Fed 3rd 1049.

However, “The role of this prosecutor differs significantly from that of others who practice law, including criminal defense lawyers: A Prosecutor is held to a standard higher than that

imposed on other attorneys because of the unique function he or she performs in representing the interests and in exercising the sovereign power, of the state ... the prosecutor represents 'sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore in a criminal prosecution is not that it shall win a case, but that justice shall be done' Berger v. United States (1935) 295 U.S. 78,88 (People v. Hill (1998) 17 Cal 4th 800, 8.

*Prosecutors have a special obligation to promote justice and the ascertainment of truth ... The duty of the district attorney is not merely that of an advocate. His duty is not to obtain convictions, but to fully and fairly present ... the evidence..."* People v. Kasim (1997) 56 Cal.Spp.4th 1360, 1378

The truth and evidence was there for the prosecution to ascertain, but the prosecution was so anxious to win, at all costs, that they ignored the plaintiff's right to a fair trial, and never did the required investigation of the cases they were prosecuting him for. **(SEE: Model Rule of Professional Conduct Rule 1.1, cmt. 5 (1983)(amended 1998) "...competent handling of a particular matter involves inquiry into analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners."**

There was never anything fair about the case the prosecution was building against the plaintiff. *As an officer of the court, the prosecutor has a heavy responsibility to the court and to the defendant to conduct a fair trial.* (United States v. Escalante (9th Cir. 1980) 637 F.2d 1197, 1203.) 6 Cal. Rptr. 2d 138])

*"...where fundamental jurisdiction is lacking...it follows there is no crime, the court lacks fundamental subject matter jurisdiction. This conclusion is compelled not only by the statutes and cases interpreting those statutes, this conclusion comports with fundamental principles of justice. The notion that a person can be punished under the criminal law for committing an act that is not a crime is entirely outside our system of jurisprudence."* People v. Vasilyan 174 Cal. App. 4th 443 – Cal Court of Appeals, 2nd Dist. Div. 8, 2009. See also, People v. Dlugas, one of the leading

cases on *legal impossibility*, also known as People v. Jaffe *Court of Appeals of New York*, 185 N.Y. 497, 78 N.E. 169 (1906) The Defendant could not plead guilty to the already void judgments from the time of his unlawful seizure, or to any cases filed piggy-back on those void judgment. All were void, and one cannot violate a void order.

**All proceedings founded on a void judgment are themselves regarded as void.** *A void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place...it is not entitled to enforcement.* **30A Am Jur Judgments 43, 44, 45.** Henderson v. Henderson, 232 NC 380, 100 SE 2d 227.

**THEREFORE**, no judgment could be filed against the plaintiff, and all subsequent added judgments, including the sham, felony charges, files by the Lorain City Police Department on this case are void, and **THEREFORE**, on this point alone the Criminal Case against the plaintiff needs to be validated as void, and dismissed as such, with an Awards of Damages. (see Exhibit A)

Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is “without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reveral in opposition to them. They constitute no justification; and **all persons concerned** in executing such judgments or sentences, are considered, in law, as respassers.” Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

## CORRUPT JUDGES

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### **CIVIL RIGHTS VIOLATIONS**

#### **Title 18, U.S.C., Section 241 Conspiracy Against Rights**

**This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).**

**It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.**

**Punishment varies from a fine or imprisonment of up to ten years, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life.**

#### **Title 18, U.S.C., Section 242**

##### **Deprivation of Rights Under Color of Law**

***This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.***

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

***Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.***

Sec. 1983. - Civil action for deprivation of rights

***Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory***

decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia Title 42, U.S.C., Section 14141.

*"This Constitution, and the Laws of the United States [and Treaties] which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land. +++*

*Supremacy Clause, Article VI, Clause 2 of the United States Constitution*

**When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices. [386 U.S. 547, 568].**

*A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function. See, e. g., Ex parte Virginia, 100 U.S. 339 ; 2 Harper & James, The Law of Torts 1642-1643 (1956).*

***The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function.***

*When the state is one of the perpetrators and violators, there can be no expectation of just, indeed any, relief from it. The State cannot cause a federal violation, and then try to prohibit litigants from seeking redress in the federal courts for those same violations (i.e. the state cannot violate our fundamental rights, and then try to have us dismissed out of federal court for seeking vindication of those rights) ' "We have long recognized that a state cannot create a transitory cause of action and at the same time destroy the fight to sue on that transitory cause of action in any court having jurisdiction", Tennessee Coal, Iron & R. Co. v. George, 233 U.S. 354, 360 (1914)' cited in Marshall v. Marshall (2006). Judges' oath of office includes the undertaking to uphold the laws and Constitution of the United States. Any Judge violating such undertakings loses jurisdiction, resulting in his orders being VOID, and he himself commits a treasonable offense against the United States.*

Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both.

## **FRAUD UPON THE COURT (By The Court)**

***Fraud Upon the Court is where the Judge (who is NOT the "Court")*** does NOT support or uphold the Judicial Machinery of the Court. The Court is an unbiased, but methodical "creature" which is governed by the Rule of Law... that is, the Rules of Civil Procedure, the Rules of Criminal Procedure and the Rules of Evidence, all which is overseen by Constitutional law. The Court can ONLY be effective, fair and "just" if it is allowed to function as the laws proscribe. The sad fact is that in MOST Courts across the country, from Federal Courts down to local District courts, have judges who are violating their oath of office and are NOT properly following these rules, (as most attorney's do NOT as well, and are usually grossly ignorant of the rules and both judges and attorneys are playing a revised legal game with their own created rules) and THIS is a Fraud upon the Court, immediately removing jurisdiction from that Court, and vitiates (makes ineffective - invalidates) every decision from that point on. Any judge who does such a thing is under mandatory, non-discretionary duty to recuse himself or herself from the case, and this rarely happens unless someone can force them to do so with the evidence of violations of procedure and threat of losing half their pensions for life which is what can take place. In any case, it is illegal, and EVERY case which has had fraud involved can be re-opened AT ANY TIME, because there is no statutes of limitations on fraud.

## **"Fraud On The Court By An Officer Of The Court" And "Disqualification Of Judges, State and Federal Law"**

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### **1. Who is an "officer of the court?"**

A judge is an officer of the court, as well as are all attorneys. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. *A judge is not the court.* People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

### **2. What is "fraud on the court"?**

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore's Federal Practice*, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

### **3. What effect does an act of "fraud upon the court" have upon the court proceeding?**

"Fraud upon the court" makes void the orders and judgments of that court.

It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Thomas Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935).

Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

### **4. What causes the "Disqualification of Judges?"**

Federal law requires the automatic disqualification of a Federal judge under certain circumstances.

***In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality.*** If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994).

***Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality.*** *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States v.*



Balistreri, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

***The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice"***, Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.

***"Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances."*** Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).

Further, ***the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification.*** The Seventh Circuit Court of Appeals further stated that "We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." Balistreri, at 1202.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.

***Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution.*** United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

***Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his / her property, then the judge may have been engaged in the Federal Crime of "interference with interstate commerce".*** The judge has acted in the judge's personal capacity and not in the judge's judicial capacity. It has been said that this judge, acting in this manner, has no more lawful authority than someone's next-door neighbor (provided that he is not a judge). However some judges may not follow the law.

The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. ***If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction***, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.

***Courts have repeatedly ruled that judges have no immunity for their criminal acts.*** Since both treason and the interference with interstate commerce are criminal acts, no judge has immunity to engage in such acts.



## **Retaliation as a Whistle Blower & for Filing a Civil Rights Complaint**

The Department of Justice, Civil Rights Division and the Federal Bureau of Investigation give instruction of filing a Color of Law complaint to report of a potential civil rights violation and enforcing civil rights laws.

The Whistleblower Protection Act of 1989 also protects citizens who report these crimes and file complaints from retaliation. Under Section 3771 of Title 18 of the U.S. Code, Crimes and Criminal Procedure, federal crime victims also have "The right to reasonable protection from the accused" and "The right to be treated with fairness and with respect for the victim's dignity and privacy"

Not only have I been victimized by public officials, violating my rights under Federal Civil Rights Statutes, but my rights as a crime victim have also been violated after filing Federal Civil Rights Complaints. I have received major retaliation, Cruel, Inhuman, and Degrading (CID) treatment in violation of the Whistleblower Protection Act of 1989 and Title 18 U.S.C. Section 3771, Crime Victims Rights.

### **Excerpt from: the DOJ/Civil Right Division**

The Criminal Section prosecutes cases involving the violent interference with liberties and rights defined in the Constitution or federal law. The rights of both citizens and non-citizens are protected. In general, it is the use of force, threats, or intimidation that characterize a federal criminal violation of an individual's civil rights.

Our cases often involve incidents that are invariably of intense public interest. While some violations may most appropriately be pursued by the federal Government, others can be addressed by either the federal Government or by state or local prosecutors. Our ultimate goal is to ensure that acts constituting federal criminal civil rights violations are sufficiently remedied, whether prosecuted federally or by local authorities.

### **Excerpt from: the FBI website on Color of Law Abuse**

U.S. law enforcement officers and other officials like judges, prosecutors, and security guards have been given tremendous power by local, state, and federal government agencies—authority they must have to enforce the law and ensure justice in our country. Preventing abuse of this authority, however, is equally necessary to the health of our nation's democracy. That's why it's a federal crime for anyone acting under "color of law" willfully to deprive or conspire to deprive a person of a right protected by the Constitution or U.S. law.

**Failure to keep from harm:** The public counts on its law enforcement officials to protect local communities. If it's shown that an official willfully failed to keep an individual from harm, that official could be in violation of the color of law statute.

### **Filing a Complaint**

To file a color of law complaint, contact your local FBI office by telephone, in writing, or in person. The following information should be provided:

## Conclusion

The Plaintiff is a Pro Per

It is held that a pro-se pleading requires less stringent reading than one drafted by a lawyer. Puckett v. Cox 456 F.2d 233 (1972 Sixth Circuit USCA). And, Justice Blackin in Conley v. Gibson, 355 U.S. 41 at 48 (1957)

The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.”

“...a pro se petition cannot be held to same standard as pleadings drafted by attorneys”  
SEE: Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); Haines v. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)

“A court faced with a motion to dismiss, a pro se complaint must read the complaint’s allegations expansively,” Haines v. Kerner 404 U.S. 519, 520-21, S. Ct. 594, 596, 60 L.Ed. 2d 652 (1972)

“Court has special obligation to construe pro se litigant’s pleadings liberally” Polling v. Hovnanian Enterprises, 99 F. Supp. 2d 502, 506-07 (D.N.J. 2000)

“We hold pro se pleadings to a less stringent standard than pleadings drafted by attorneys and construe them liberally.” Tannenbaum v. United States, 148 F.3d 1262, 1263 (11<sup>th</sup> Cir. 1998)

It suggests the court should take whatever measures may be reasonable and necessary to insure a fair trial and says “There is only one reported case in the U.S. finding a judge’s specific accommodations have gone too far”

As a matter of law, because from the beginning the prosecutor's office, Judge Rothgery, and then all judges, and defense attorneys, through "bad lawyering" and a lack of due diligence, makes this a frivolous case and a void on the face judgment, which has violated the plaintiff's right to a fair trial, caused him great harm, pain and suffering, and has left him in a state of Post Traumatic Stress Syndrome to this day.

All that is required to determine the original void case, on which the prosecution did unlawfully and falsely prosecute the plaintiff is to simply review the *judgment roll record* in Trylson v. Stephens INC057008 Riverside County Superior Court, Indio CA, and Robbins v. Stephens, INC 040482 Riverside County Superior Court, Indio, CA as is required to determine a void judgment. People v. American Contractors Indemnity Co., (2004) 33 Cal 4th at o,661). **It is that simple.** (See Exhibit A)

This void criminal case against the plaintiff, must be dismissed on the record his record expunged, and an Award for Damages in the minimum about of \$150,000 (one hundred fifty thousand dollars). The court is also asked to award the plaintiff punitive damages of \$200,000 (two hundred thousand dollars), for a false and malicious prosecution that cause him much harm, from which he still suffers, and, any other damages as the court sees fit.

Respectfully submitted,

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